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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Cuba under article 29 (1) of the Convention

Addendum

Information received from Cuba on follow-up to the concluding observations*

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* The present document is being issued without formal editing.

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Response to the recommendation in paragraph 26 of the concluding observations

1. Cuba guarantees, both in law and in practice, the right of all persons deprived of their liberty, including under military jurisdiction, to immediately inform a family member, or any other person of their choice, of their detention.

2. The officer on duty has a legal obligation to read every person who is arrested their rights and duties. This information is also clearly displayed in detention facilities so that detainees may read it at any time.

3. As stated during the dialogue with the Committee, the Criminal Procedure Act regulates when detained persons have the right to meet with their lawyers. According to article 249, once a decision has been issued ordering any of the precautionary measures authorized by the Act, the accused becomes a party to the proceedings and may present evidence in his or her defence.

4. Precautionary measures may be applied for a 72-hour period, during which detainees are able to appoint a lawyer. Only in the case of the most serious crimes, in which the prosecutor may apply the precautionary measure of pretrial detention, may this time period be extended for an additional 72 hours.

5. In the vast majority of cases, as was pointed out during the dialogue, precautionary measures are applied within 72 hours of arrest, and the person concerned is able to appoint a defence lawyer.

6. Article 244 of the Criminal Procedure Act establishes the right of detainees to inform their families and lawyers of their situation, as well as the obligation of the police, or the arresting officer, to provide information on the arrest and to facilitate communication between the detainee and his or her family and lawyer. All of this is overseen by the Attorney General's Office, which also monitors the investigation stage to ensure compliance with the law in all cases.

7. The rights of detained persons are guaranteed regardless of whether they have appointed a lawyer, and include:

- The principle of the presumption of innocence, enshrined in article 1 of the Criminal Procedure Act;
- The right to remain silent and, if the detainee chooses to make a statement, the right to give evidence as often as they wish, as well as the right to be informed of the charges brought against them and by whom;
- The burden of proof lies with the prosecution, which must establish guilt irrespective of whether the accused has testified;
- No statement may be obtained from the accused using any form of violence or coercion; any statement obtained in such a manner shall be declared null and void, without prejudice to the criminal liability of those responsible;
- The filing of a custody report describing the charges and the time and date of arrest and informing the detainee's family of the place of detention;
- The right to appeal against the precautionary measure imposed by the competent authority;
- The right to communicate with one's family and other relevant persons, a medical examination before entering custody and all necessary medical assistance for existing ailments;
- The provision of sufficient food and the opportunity for family members to provide additional food items and personal hygiene products; women are held in appropriate areas and special protection measures are in place for those who are pregnant or breastfeeding.

8. Lawyers may visit and/or interview their clients with the necessary degree of privacy whenever they need to, by prior arrangement with the head of the prison or detention facility, on presentation of the corresponding legal services contract.

9. If a person is unable to appoint a lawyer to defend him or her during the oral proceedings, he or she will be assigned a court-appointed lawyer. Criminal proceedings may not proceed in the absence of a defence lawyer.

Response to the recommendation in paragraph 28 of the concluding observations

10. The prosecutor is responsible for ordering the application of the precautionary measure of pretrial detention, as set forth in article 247 of the Criminal Procedure Act.

11. The Act provides that pretrial detention or any other form of precautionary measure may only last for as long as the original grounds for taking the measure exist.

12. The accused or his or her defence lawyer may at any time seek to have the precautionary measure modified.

13. While the investigation is proceeding, any change to the precautionary measure of pretrial detention must be decided by the prosecutor. Once proceedings reach the oral stage, the court assumes that function.

14. In the event that the prosecutor denies an appeal against the precautionary measure of pretrial detention, the accused or his or her counsel is immediately informed and may apply for the corresponding remedy, namely: a complaint to the hierarchical superior of the prosecutor who imposed the measure and refused to change it; or an application for reconsideration to the court that imposed and/or rejected the pretrial detention measure.

15. Alternatively, as stated during the dialogue, the habeas corpus procedure is available to challenge the legality of detention. Any person deprived of liberty other than in the cases, or without the formalities and guarantees, provided for in the Constitution and the law must be released, at his or her request or that of any other person, through a summary procedure of habeas corpus before the competent courts.

Response to the recommendation in paragraph 30 of the concluding observations

16. As stated during the dialogue with the Committee, all prisons and correctional facilities in Cuba are subject to a system of inspection that is independent of the authority responsible for their administration. In accordance with the legislation in force, judges (who must check that sentences are properly enforced) and prosecutors have access to prisons and other detention facilities in order to inspect the application of penalties and the precautionary measure of pretrial detention, with a view to helping to achieve the objectives of such measures. The role of the Attorney General is essential in this regard.

17. Article 127 of the Constitution and article 28 of Act No. 83, the Act governing the Office of the Attorney General of the Republic, stipulate that the Office is authorized to carry out inspections in order to verify compliance with the law in all prison centres and facilities. This ensures that respect for the individual rights of prisoners, and in particular the legality of the application of sentences, is monitored by an entity external to the prison administration.

18. In addition, under Act No. 101 of 2006, the Act governing the Military Prosecutor's Office, military prosecutors within their respective jurisdictions are authorized to inspect at any time places of detention, units, military establishments, disciplinary units, prisons and disciplinary holding units.

19. The Attorney General's Office conducts regular inspections of prison centres and facilities under the powers conferred on it by Act No. 83. This work is carried out in

accordance with its internal programme of work, but also allows for the investigation of allegations and complaints submitted by prisoners, detainees or their family members.

20. The inspection visits are carried out in line with the provisions of the decision of the Attorney General. The majority of the visits are made on a regular monthly basis, without prior notice. During the visits, the prosecutor is authorized to interview detainees and persons in pretrial detention, awaiting sentencing or serving sentences, to investigate their legal status or registration and to resolve any queries they may have regarding such matters.

21. After every inspection visit, a record is produced and sent to the managing body, authority or official. The record contains relevant observations and recommendations.

22. Where violations are identified, the Attorney General issues an order to remedy them, and the relevant personnel must inform the Attorney General of the measures taken to do so.

23. Officials and authorities who, in the exercise of their functions, violate the established guarantees and limits are held criminally and administratively liable, and are required to restore compliance with the law.

24. Thematic inspections of the prison centres and facilities in Cuba have increased the quality and effectiveness of the checks made and the restoration of compliance with the law. The thematic inspections are conducted by working groups made up of prosecutors and specialists from various institutions, depending on the theme. The preparation for the visits is based on the methodologies set out in guides issued for each theme.

25. Between 2012 and 2015, the Attorney General's Office carried out 40,430 inspections, 5,871 in prison centres and facilities and 34,551 in detention facilities. The violations identified were corrected immediately in 73 per cent of cases in prison centres and facilities, and in 86 per cent of cases in detention facilities. The remainder could not be corrected immediately because of external factors such as investment in building work.

26. In accordance with the provisions of the law and the regulations, the Attorney General's Office provides systematic monitoring and follow-up of the results of its inspections of prison facilities and detention centres and strives to remedy immediately any violations identified. Where necessary, it also checks that the measures outlined in the plans drawn up by the prisons and places of detention themselves are implemented, and monitors their implementation in subsequent inspections.

27. Prisons are regularly visited by prisoners' relatives and other individuals, including representatives of national political and social organizations, law students and artists who take their work into prisons.

28. By prior arrangement, social workers and other non-governmental organizations, including representatives of religious institutions, may visit prisons, as provided for in article 54 (t) of the Prison System Rules.

29. Concerning the ratification of the Optional Protocol to the Convention against Torture, it should be noted that Cuba has effective national remedies to ensure the rigorous implementation of the Convention.

30. It has not been considered necessary to assume obligations that would involve supranational procedures and bodies in the processing of individual complaints or to resort to international investigative bodies in order to ensure that persons living in Cuba enjoy the full protection of the rights enshrined in international human rights instruments and have access to the remedies provided for.

31. The appropriate use of the remedies established by national legislation has made it possible to prevent any violation in Cuba of the provisions set forth in the Convention against Torture and other international human rights instruments.

32. As part of the process of modernizing the Cuban model of economic and social development, a considerable number of laws and regulations have been revised, updated and amended, while others are under review.

33. The harmonization of national legislation with the international instruments ratified by Cuba has always been, and continues to be, one of the principles underpinning the action of the Cuban State and Government.

34. The Government of Cuba recognizes that further progress is needed to ensure the implementation of the regulatory and material adjustments prescribed by the international instruments to which it is a party, and is working towards this end. For example, studies are under way to comprehensively amend and update the Criminal Code, making all the changes that need to be made, such as a more explicit definition of certain offences.